

# 9-15.000

## INTERNATIONAL EXTRADITION AND RELATED MATTERS

---

- 9-15.100 Definition and General Principles
  - 9-15.200 Procedures For Requesting Extradition From Abroad
  - 9-15.210 Role of the Office of International Affairs
  - 9-15.220 Determination of Extraditability
  - 9-15.225 Procedure When Fugitive is Non-Extraditable
  - 9-15.230 Request for Provisional Arrest
  - 9-15.240 Documents Required in Support of Request for Extradition
  - 9-15.250 Procedure After Assembling Documents
  - 9-15.300 Procedure in the Foreign Country
  - 9-15.400 Return of the Fugitive
  - 9-15.500 Post Extradition Considerations -- Limitations on Further Prosecution
  - 9-15.600 Alternatives To Extradition
  - 9-15.610 Deportations, Expulsions, or other Extraordinary Renditions
  - 9-15.620 Extradition From a Third Country
  - 9-15.630 Lures
  - 9-15.635 Interpol Red Notices
  - 9-15.640 Revocation of United States Passports
  - 9-15.650 Foreign Prosecution
  - 9-15.700 Foreign Extradition Requests
  - 9-15.800 Plea Agreements and Related Matters -- Prohibition
- 

### 9-15.100

#### Definition and General Principles

International extradition is the formal process by which a person found in one country is surrendered to another country for trial or punishment. The process is regulated by treaty and conducted between the Federal Government of the United States and the government of a foreign country. It differs considerably from interstate rendition, commonly referred to as interstate extradition, mandated by the Constitution, Art. 4, Sec. 2.

Generally under United States law (18 U.S.C. § 3184), extradition may be granted only pursuant to a treaty. However, some countries grant extradition without a treaty. However, every such country requires an offer of reciprocity when extradition is accorded in the absence of a treaty. Further, the 1996 amendments to 18 U.S.C. 3181 and 3184 permit the United States to extradite, without regard to the existence of a treaty, persons (other than citizens, nationals or permanent residents of the United States), who have committed crimes of violence against nationals of the United States in foreign countries. A list of countries with which the United States has an extradition treaty relationship can be found in the Federal Criminal Code and Rules, following

18 U.S.C. § 3181, but consult the Criminal Division's Office of International Affairs (OIA) to verify the accuracy of the information. *See* the Criminal Resource Manual at 535 for the text of § 3184, and at 536 for links to some of the extradition treaties the United States has negotiated.

Because the law of extradition varies from country to country and is subject to foreign policy considerations, prosecutors should consult OIA for advice on any matter relating to extradition before taking any action in such a case, especially before contacting any foreign official.

*See* the Criminal Resource Manual at 601, for a discussion of the constitutionality of 18 U.S.C. § 3184.

## **9-15.200 Procedures For Requesting Extradition From Abroad**

*See* the Criminal Resource Manual at 602.

### **9-15.210 Role of the Office of International Affairs**

The Office of International Affairs (OIA) provides information and advice to Federal and State prosecutors about the procedure for requesting extradition from abroad. OIA also advises and provides support to Federal prosecutors handling foreign extradition requests for fugitives found in the United States.

Every formal request for international extradition based on Federal criminal charges must be reviewed and approved by OIA. At the request of the Department of State, formal requests based on State charges are also reviewed by OIA before submission to the Department of State.

Acting either directly or through the Department of State, OIA initiates all requests for provisional arrest of fugitives pursuant to extradition treaties. Neither prosecutors nor agents are permitted to contact their foreign counterparts to request the arrest of a fugitive for extradition. Unauthorized requests cause serious diplomatic difficulties and may subject the requester to financial liability or other sanctions.

Every extradition treaty is negotiated separately, and each contains different provisions. Experience with one treaty is not a guide to all others. Therefore, after reviewing this section of the United States Attorneys' Manual, the first step in any extradition case should be to contact OIA. Attorneys in OIA will advise prosecutors about the potential for extradition in a given case and the steps to be followed.

### **9-15.220 Determination of Extraditability**

*See* the Criminal Resource Manual at 603.

### **9-15.225 Procedure When Fugitive is Non-Extraditable**

If the fugitive is not extraditable, other steps may be available to return him or her to the United States or to restrict his or her ability to live and travel overseas. *See* USAM 9-15.600 *et seq.* These steps, if taken, should likewise be documented.

Courts may require the government to request the extradition of a fugitive as soon as his or her location becomes known, unless the effort would be useless. If the decision is made to not seek extradition in a particular case, the prosecutor and the Office of International Affairs (OIA) will make a record to document why extradition was not possible in the event of a subsequent Speedy Trial challenge.

### **9-15.230 Request for Provisional Arrest**

Every extradition treaty to which the United States is a party requires a formal request for extradition, supported by appropriate documents. Because the time involved in preparing a formal request can be lengthy, most treaties allow for the provisional arrest of fugitives in urgent cases. Once the United States requests provisional arrest pursuant to the treaty, the fugitive will be arrested and detained (or, in some countries, released on bail) as soon as he or she is located. Thereafter, the United States must submit a formal request for extradition, supported by all necessary documents, duly certified, authenticated and translated into the language of the country where the fugitive was arrested, within a specified time (from 30 days to three months, depending on the treaty). *See* USAM 9-15.240. Failure to follow through on an extradition request by submitting the requisite documents after a provisional arrest has been made will result in release of the fugitive, strains on diplomatic relations, and possible liability for the prosecutor.

The Office of International Affairs (OIA) determines whether the facts meet the requirement of urgency under the terms of the applicable treaty. If they do, OIA requests provisional arrest; if not, the prosecutor assembles the documents for a formal request. The latter method is favored when the defendant is unlikely to flee because the time pressures generated by a request for provisional arrest often result in errors that can damage the case. If provisional arrest is necessary because of the risk of flight, the prosecutor should complete the form for requesting provisional arrest and forward it, along with a copy of the charging document and arrest warrant, to OIA by fax (*see* the Criminal Resource Manual at 604); alternatively, this exchange of forms and completed requests between the United States Attorney and OIA can be made by Email. State prosecutors who request provisional arrest must also certify that the necessary documents will be submitted on time and that all expenses, including the cost of transportation by United States Marshals, will be covered.

Prosecutors should complete the form in any case in which it appears that provisional arrest may be necessary. Once it is completed, it may be emailed directly to the Office of International Affairs (OIA) attorney or team responsible for the country in which the fugitive has been found or emailed to the general OIA email address, CRM03(OIAINBOX), and OIA's docketing unit will forward it to the appropriate attorney in OIA. The form may also be faxed to OIA at (202) 514-0080. A copy of the charging document and warrant should be faxed to OIA.

The form was created with both Federal and State cases in mind. Thus, Assistant United States Attorneys are free to print the form and give it to state and local prosecutors working on extradition cases. State prosecutors should fax the form to OIA at (202) 514-0080.

## **9-15.240 Documents Required in Support of Request for Extradition**

The request for extradition is made by diplomatic note prepared by the Department of State and transmitted to the foreign government through diplomatic channels. It must be accompanied by the documents specified in the treaty. The Office of International Affairs (OIA) will advise the prosecutor of the documentary requirements, but it is the responsibility of the prosecutor to prepare and assemble them and forward the original and four copies to OIA in time to be reviewed, authenticated, translated, and sent through the Department of State to the foreign government by the deadline.

OIA will provide samples of the documents required in support of the request for extradition. Although every treaty varies, all generally require:

- An affidavit from the prosecutor explaining the facts of the case. *See* Criminal Resource Manual at 605.
- Copies of the statutes alleged to have been violated and the statute of limitations. *See* Criminal Resource Manual at 607.
- If the fugitive has not been convicted, certified copies of the arrest warrant and complaint or indictment. *See* Criminal Resource Manual at 606.

- Evidence, in the form of affidavits or grand jury transcripts, establishing that the crime was committed, including sufficient evidence (i.e., photograph, fingerprints, and affidavit of identifying witness) to establish the defendant's identity (CAVEAT: The use of grand jury transcripts or trial transcripts should, if at all possible, be avoided). *See Criminal Resource Manual at 608.*
- If the fugitive has been convicted, a certified copy of the order of judgment and committal establishing the conviction, an affidavit stating the sentence was not or was only partially served and the amount of time remaining to be served, and evidence concerning identity. *See Criminal Resource Manual at 609.*

Prosecutors should be aware that there are few workable defenses to extradition, although appeals and delays are common. Fugitives, however, may be able to contest extradition on the basis of minor inconsistencies resulting from clerical or typographical errors. Although these can be remedied eventually, they take time to untangle. Therefore, pay careful attention to detail in preparing the documents.

### **9-15.250 Procedure After Assembling Documents**

After assembling the documents required in support of extradition, the prosecutor must review them carefully to ensure that all dates and charges mentioned in the affidavit and accompanying exhibits are consistent.

Unless told that the foreign country will require a different number of copies of the documents, the prosecutor should forward the original and four copies of the entire package to Office of International Affairs (OIA).

Attorneys in OIA review the package for completeness and send a copy to the Department of State for translation, which can take three weeks even for common languages. The cost of translation will be billed to the district requesting extradition. OIA secures the required certifications on the original and transmits it to the Department of State.

### **9-15.300 Procedure in the Foreign Country**

The Department of State will send the extradition documents and the translation to the American Embassy in the foreign country, which will present them under cover of a diplomatic note formally requesting extradition to the appropriate agency of the foreign government, usually the foreign ministry. The request and supporting documents are then forwarded to the court or other body responsible for determining whether the requirements of the treaty and the country's domestic law have been met.

In general, the foreign government's decision on our extradition request is based on the request itself and any evidence presented by the fugitive. Because the American prosecutor will not have the opportunity to appear before the foreign court, the written submission, particularly the prosecutor's affidavit, must be as persuasive as possible. This is particularly essential when the charges are based on statutes unique to United States law, such as RICO or CCE.

Though factual defenses to extradition are limited, the fugitive may delay a decision through procedural challenges. The determination of extraditability is often subject to review or appeal. Prediction of the time required to return an individual to the United States is difficult and depends on the circumstances of the individual case and the practice of the foreign country involved.

### **9-15.400 Return of the Fugitive**

Once the foreign authorities notify the American Embassy that the fugitive is ready to be surrendered, the Office of International Affairs (OIA) will inform the prosecutor and arrange with the United States Marshals

Service for agents to escort the fugitive to the United States. United States Marshals must provide the escort even in a State case. However, in rare cases arrangements are sometimes made for State or other federal law enforcement agents to accompany the U.S. Marshals. If the fugitive is an alien, OIA will ask the INS to issue a "parole letter" authorizing the alien to enter the country.

### **9-15.500 Post Extradition Considerations: Limitations on Further Prosecution**

Every extradition treaty limits extradition to certain offenses. As a corollary, all extradition treaties restrict prosecution or punishment of the fugitive to the offense for which extradition was granted unless (1) the offense was committed after the fugitive's extradition or (2) the fugitive remains in the jurisdiction after expiration of a "reasonable time" (generally specified in the extradition treaty itself) following completion of his punishment. This limitation is referred to as the Rule of Specialty. Prosecutors who wish to proceed against an extradited person on charges other than those for which extradition was granted must contact the Office of International Affairs (OIA) for guidance regarding the availability of a waiver of the Rule by the sending State.

Frequently, defendants who have been extradited to the United States attempt to dismiss or limit the government's case against them by invoking the Rule of Specialty. There is a split in the courts on whether the defendant has standing to raise specialty: some courts hold that only a party to the Treaty (i.e., the sending State) may complain about an alleged violation of the specialty provision, other courts allow the defendant to raise the issue on his own behalf, and other courts take a middle position and allow the defendant to raise the issue if it is likely that the sending State would complain as well. Whenever a defendant raises a specialty claim, the prosecutor should contact OIA for assistance in responding.

Defendants also occasionally make other substantive or procedural challenges to their extradition. It is impossible to anticipate all the creative challenges that may be devised; if a returned defendant challenges his extradition, you should contact OIA.

### **9-15.600 Alternatives To Extradition**

A fugitive may be non-extraditable for any number of reasons, including but not limited to instances where he or she is a national of the country of refuge, the crime is not an extraditable offense, the statute of limitations has run in the foreign country, or extradition was requested and denied. (If, after discussing the case with the Office of International Affairs (OIA), the prosecutor concludes that the fugitive is not extraditable, that conclusion and the reasons should be documented. *See* USAM 9-15.228.)

There may be available alternatives that will result either in the return of the fugitive or limitations on his or her ability to live or travel overseas. OIA will advise the prosecutor concerning the availability of these methods. These alternative methods are discussed in USAM 9-15.610-650.

### **9-15.610 Deportations, Expulsions, or other Extraordinary Renditions**

If the fugitive is not a national or lawful resident of the country in which he or she is located, the Office of International Affairs (OIA), through the Department of State or other channels, may ask that country to deport or expel the fugitive.

In *United States v. Alvarez-Machain*, 504 U.S. 655 (1992), the Supreme Court ruled that a court has jurisdiction to try a criminal defendant even if the defendant was abducted from a foreign country against his or her will by United States agents. Though this decision reaffirmed the long-standing proposition that personal jurisdiction is not affected by claims of abuse in the process by which the defendant is brought before the court, it sparked concerns about potential abuse of foreign sovereignty and territorial integrity.

Due to the sensitivity of abducting defendants from a foreign country, prosecutors may not take steps to secure custody over persons outside the United States (by government agents or the use of private persons, like bounty hunters or private investigators) by means of *Alvarez-Machain* type renditions without advance approval by the Department of Justice. Prosecutors must notify the Office of International Affairs before they undertake any such operation. If a prosecutor anticipates the return of a defendant, with the cooperation of the sending State and by a means other than an *Alvarez-Machain* type rendition, and that the defendant may claim that his return was illegal, the prosecutor should consult with OIA before such return. See Criminal Resource Manual at 610, for further discussion of the law on this issue.

### **9-15.620 Extradition From a Third Country**

If the fugitive travels outside the country from which he or she is not extraditable, it may be possible to request his or her extradition from another country. This method is often used for fugitives who are citizens in their country of refuge. Some countries, however, will not permit extradition if the defendant has been lured into their territory. Such ruses may also cause foreign relations problems with both the countries from which and to which the lure takes place. Prosecutors must notify the Office of International Affairs before pursuing any scenario involving an undercover or other operation to lure a fugitive into a country for law enforcement purposes (extradition, deportation, prosecution).

### **9-15.630 Lures**

A lure involves using a subterfuge to entice a criminal defendant to leave a foreign country so that he or she can be arrested in the United States, in international waters or airspace, or in a third country for subsequent extradition, expulsion, or deportation to the United States. Lures can be complicated schemes or they can be as simple as inviting a fugitive by telephone to a party in the United States.

As noted above, some countries will not extradite a person to the United States if the person's presence in that country was obtained through the use of a lure or other ruse. In addition, some countries may view a lure of a person from its territory as an infringement on its sovereignty. Consequently, a prosecutor must consult with the Office of International Affairs before undertaking a lure to the United States or a third country.

### **9-15.635 Interpol Red Notices**

An Interpol Red Notice is the closest instrument to an international arrest warrant in use today. Please be aware that if a Red Notice is issued, the prosecutor's office is obligated to do whatever work is required to produce the necessary extradition documents within the time limits prescribed by the controlling extradition treaty whenever and wherever the fugitive is arrested. Further, the prosecutor's office is obliged to pay the expenses pursuant to the controlling treaty.

Interpol Red Notices are useful when the fugitive's location or the third country to which he or she may travel (*see* USAM 9-15.620), is unknown. For additional information about Interpol Red Notices, see the Criminal Resource Manual at 611.

### **9-15.640 Revocation of United States Passports**

The Department of State may revoke the passport of a person who is the subject of an outstanding Federal warrant. Revocation of the passport can result in loss of the fugitive's lawful residence status, which may lead to his or her deportation. If the fugitive is wanted on State charges only, it will be necessary to obtain a warrant

on a UFAP complaint because the Department of State is only authorized to revoke the passports of persons named in Federal warrants.

### **9-15.650 Foreign Prosecution**

If the fugitive has taken refuge in the country of which he or she is a national, and is thereby not extraditable, it may be possible to ask that country to prosecute the individual for the crime that was committed in the United States. This can be an expensive and time consuming process and in some countries domestic prosecution is limited to certain specified offenses. In addition, a request for domestic prosecution in a particular case may conflict with U.S. law enforcement efforts to change the "non-extradition of nationals" law or policy in the foreign country. Whether this option is available or appropriate should be discussed with OIA.

### **9-15.700 Foreign Extradition Requests**

Foreign requests for extradition of fugitives from the United States are ordinarily submitted by the embassy of the country making the request to the Department of State, which reviews and forwards them to the Criminal Division's Office of International Affairs (OIA). The requests are of two types: formal requisitions supported by all documents required under the applicable treaty, or requests for provisional arrest. (Requests for provisional arrest may be received directly by the Department of Justice if the treaty permits. *See* USAM 9-15.230 for an explanation of provisional arrest.)

When OIA received a foreign extradition request, in summary, the following occurs:

1. OIA reviews both types of requests for sufficiency and forwards appropriate ones to the district.
2. The Assistant United States Attorney assigned to the case obtains a warrant and the fugitive is arrested and brought before the magistrate judge or the district judge.
3. The government opposes bond in extradition cases.
4. A hearing under 18 U.S.C. § 3184 is scheduled to determine whether the fugitive is extraditable. If the court finds the fugitive to be extraditable, it enters an order of extraditability and certifies the record to the Secretary of State, who decides whether to surrender the fugitive to the requesting government. In some cases a fugitive may waive the hearing process.
5. OIA notifies the foreign government and arranges for the transfer of the fugitive to the agents appointed by the requesting country to receive him or her. Although the order following the extradition hearing is not appealable (by either the fugitive or the government), the fugitive may petition for a writ of habeas corpus as soon as the order is issued. The district court's decision on the writ is subject to appeal, and the extradition may be stayed if the court so orders.

*See* Criminal Resource Manual at 612, for a more detailed discussion of foreign extradition requests.

### **9-15.800 Plea Agreements and Related Matters -- Prohibition**

Persons who are cooperating with a prosecutor may try to include a "no extradition" clause in their plea agreements. Such agreements, whether formal or informal, may be given effect by the courts. If a foreign country subsequently requests the person's extradition, the United States faces the unpleasant dilemma of breaching its solemn word either to the person involved or to its treaty partner. *Petition of Geisser*, 627 F.2d 745 (5th Cir. 1980), describes the enormous practical problems of resolving such a dilemma. Related matters involve agreements with potential witnesses to prevent or delay their deportation.

Prosecutors may not agree either formally or informally to prevent or delay extradition or deportation unless they submit a written request for authorization, and receive an express written approval from the Assistant

Attorney General, Criminal Division. Requests should be submitted to the Office of International Affairs after endorsement by the head of the section or office responsible for supervising the case.